

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

AITHENT, INC.,

Plaintiff,

-against-

THE NATIONAL ASSOCIATION OF INSURANCE  
COMMISSIONERS,

Defendant.

Case No. 4:11-CV-00173-GAF

**PLAINTIFF'S SUGGESTIONS IN OPPOSITION TO  
DEFENDANT'S MOTION IN LIMINE #3**

Defendant National Association of Insurance Commissioners (“NAIC”) argues that evidence regarding its improper solicitation and hiring of Sanjay Saini, the subject of Count IV of Aithent’s Complaint, is irrelevant and should be excluded at trial because the Court granted summary judgment on Count IV, ruling that it occurred outside of the applicable statute of limitations. The evidence relating to NAIC’s solicitation of Mr. Saini, however, remains relevant to claims that are not time-barred, since it bears on the credibility of NAIC’s corporate representative, Julie Fritz, who will be testifying at trial.

“Evidence is relevant simply if it tends to make a witness' testimony more or less credible.” *Berry v. Deloney*, 28 F.3d 604, 607 (7th Cir. 1994) (internal citation and quotation omitted); *see also United States v. Harris*, 956 F.2d 177, 181 (8th Cir. 1992) (“Evidence probative of a witness's truthfulness is admissible to impeach the witness.”). The mere fact that a party’s conduct took place outside the limitations period does not render such conduct irrelevant. *See, e.g., Jackson v. Quanex Corp.*, 191 F.3d 647, 668 (6th Cir. 1999) (evidence of misconduct prior to the limitations period was relevant, *inter alia*, to show management’s unreasonable

attitude toward such misconduct that continued for several years); *U.S. v. Chung*, 659 F.3d 815, 828 (9th Cir. 2011) (evidence of defendant's conduct outside the limitations period was relevant to show defendant's intent with regard to similar conduct that took place inside limitations period).

Here, the evidence concerning NAIC's solicitation and hiring of Sanjay Saini is relevant to the other claims that are not barred by the limitations period, since it bears on the credibility of NAIC witness Julie Fritz. As addressed in full in Aithent's summary judgment briefing (Docs. 93, 98, and 126), the documentary evidence produced by NAIC in this litigation shows that NAIC solicited Mr. Saini within the 6-month moratorium period specified in the parties' Services Agreement. Critically, when Venu Gopal of Aithent directly asked Ms. Fritz whether NAIC had observed the moratorium before soliciting Mr. Saini's employment, Ms. Fritz falsely assured Mr. Gopal that NAIC had abided by its contractual obligations. Aithent is entitled to introduce testimony and other evidence regarding NAIC's solicitation and hiring of Mr. Saini, since it is relevant and admissible as probative of Ms. Fritz's truthfulness and credibility. *See Berry v. Deloney*, 28 F.3d 604, 607 (7th Cir. 1994); *United States v. Harris*, 956 F.2d 177, 181 (8th Cir. 1992).

NAIC's other arguments that the introduction of this evidence would be a waste of time, of limited or no probative value, and prejudicial to NAIC are without merit. As demonstrated above, the evidence relating to NAIC's solicitation of Mr. Saini is probative of a key witness's credibility and thus is not a waste of time. NAIC has not indicated any prejudice that would result from the inclusion of this evidence, much less that any prejudice would be unfair or would outweigh the probative value of the evidence. *See* FED. R. EVID. 403.

### **Conclusion**

For all of the foregoing reasons, NAIC's motion *in limine* should be denied.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served through the Court's ECF system and/or mailed, postage pre-paid, on this 10<sup>th</sup> day of May, 2013 to:

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